

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

ROBERT J. LEAK,
Administrator of the Estate of Frances Leak

PLAINTIFF

VS.

CIVIL ACTION NO.: 1:15CV007-SA-DAS

RUBY TUESDAY, INC.

DEFENDANT

RUBY TUESDAY’S MOTION FOR SUMMARY JUDGMENT

COMES NOW Ruby Tuesday, Inc. (hereinafter “Ruby Tuesday”), and files this its Motion for Summary Judgment, and in support thereof would show as follows:

1.

Frances Leak tripped and fell at a Ruby Tuesday restaurant in Corinth, Mississippi on August 23, 2011. She filed suit against Ruby Tuesday almost three years later, but passed away while her suit was pending. Plaintiff Robert J. Leak is the administrator of the Estate of Frances Leak, and is pursuing this case on behalf of the Estate.

2.

For plaintiff to recover for Leak’s trip and fall, he must show that Ruby Tuesday’s premises was not reasonably safe. Specifically, he must show that an unreasonably dangerous condition existed on the premises and that the dangerous condition caused Ms. Leak’s fall and resulting damages.

3.

Leak tripped when she attempted to step from the parking lot asphalt onto the concrete walkway. Under Mississippi law, for a curb such as the one on which Ms. Leak fell to be considered

an unreasonably dangerous condition, it must be defective *and* present a sudden and unexpected dangerous condition. Plaintiff cannot make either showing. There is no evidence that the curb was defective, and there was no sudden and unexpected condition in the curb. Because plaintiff cannot produce evidence to support the necessary theory of liability, summary judgment is proper.

4.

In support of this Motion, defendants produce the following:

- 1) Exhibit "A", Excerpts from deposition testimony of Leigh Higginbottom;
- 2) Exhibit "B", Excerpts from deposition testimony of Becky Ritter; and
- 2) Exhibit "C", Pictures of the curb (Exhibits 26 and 30 from Ritter Deposition).

WHEREFORE, PREMISES CONSIDERED, Ruby Tuesday respectfully requests that this Court grant summary judgment in its favor, dismiss plaintiff's Complaint with prejudice, and grant it any other relief to which it may be entitled.

Respectfully submitted,

RUBY TUESDAY, INC.

BY: /s/ Wilton V. Byars, III
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CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2015, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which sent notification of such filing to counsel who have electronically registered with the Court, and I hereby certify that I have mailed by United States Postal Service the document to the non-ECF participants. The following is a list of all counsel of record or parties regardless whether electronically notified by the Court or sent via United States Postal Service by this firm:

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